

CNCO/Matson Pacific Islands Vessel Sharing Agreement

FMC Agreement No. 201345

Effective Date:

Commencement Date:

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CNCO/MATSON PACIFIC ISLANDS VESSEL SHARING AGREEMENT

WHEREAS, THE CHINA NAVIGATION COMPANY PTE. LTD. and MATSON SOUTH PACIFIC LIMITED each independently operate various liner shipping services under their own trade names in various trades throughout the world;

WHEREAS, the parties wish to expand and improve their respective liner shipping services in the South Pacific island trades, including calls at American Samoa;

WHEREAS, the parties wish to cooperate to establish a new service in the trades covered by this Agreement, and to independently offer the new service to their respective customers under their individual trade names;

WHEREAS, by cooperating to establish the new service, the parties expect to achieve efficiencies and economies in respective services in the trades covered by this Agreement;

THEREFORE, in consideration of the premises, and the mutual covenants, terms and conditions set forth herein, the parties hereto agree as follows:

ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the CNCO/MATSON PACIFIC ISLANDS VESSEL SHARING AGREEMENT (hereinafter referred to as this "Agreement" or "VSA").

ARTICLE 2: PARTIES TO THE AGREEMENT

The parties to this Agreement (each a "Party," and collectively, the "Parties") are:

The China Navigation Company Pte. Ltd. ("CNCO")  
Unit 27-01, 300 Beach Road, The Concourse  
199555  
Singapore

and

Matson South Pacific Limited ("Matson")  
68 Anzac Avenue  
Auckland Central  
Auckland, 1010  
New Zealand

For purposes of this Agreement:

- a) The "Vessel Operator" shall be the Party which is the owner, disponent owner, or charterer of the Vessel, and is operating that Vessel in the Service; and
- b) The "Container Operator" shall be the Party which is entitled to slots on the vessels of the Vessel Operator pursuant to the terms of this VSA, and which is the Carrier under its bill of lading or other contract of carriage in respect of goods carried

under this VSA.

### ARTICLE 3: UNDERTAKING AND PURPOSE

The purpose of this Agreement is to expand and improve the liner shipping services independently operated by CNCO and Matson in the trade covered by this Agreement. The Parties will accomplish this purpose by cooperating to establish a new Service utilizing vessels contributed, and independently operated, by each of the Parties hereto. The Parties shall share space on the vessels employed in the new Service according to the terms of this Agreement.

### ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

The initial service structure of this Agreement covers the trade between and among ports in New Zealand, Tonga, Fiji, Samoa, American Samoa, the Cook Islands and Niue (hereinafter the "Trade"). Service which does not involve American Samoa is included for informational purposes only.

### ARTICLE 5: AGREEMENT AUTHORITY

#### 5.1: The Service

The port rotation in the Service shall be:

Loop 1: Auckland (New Zealand), Nuku'alofa (Tonga), Lautoka\* (Fiji), Suva (Fiji), Apia (Samoa), Niue, Vava'u (Tonga), Nuku'alofa (Tonga), Auckland (New Zealand), Marsden Point (New Zealand), Auckland (New Zealand)

Loop 2: Auckland (New Zealand), Nuku'alofa (Tonga), Suva (Fiji), Apia (Samoa), Pago Pago\*\* (American Samoa), Rarotonga (Cook Islands), Aitutaki (Cook Islands), Auckland (New Zealand), Marsden Point (New Zealand), Auckland (New Zealand)

Loop 3 : Auckland (New Zealand), Nuku'alofa (Tonga), Lautoka\* (Fiji), Suva (Fiji), Apia (Samoa), Rarotonga (Cook Islands), Aitutaki (Cook Islands), Auckland (New Zealand), Marsden Point (New Zealand), Auckland (New Zealand)

\* Lautoka on alternate calls, i.e. in sequence of Loop 1, Loop 3, Loop 2, Loop 1

\*\* Pago Pago on alternate calls, i.e. in sequence of Loop 2, Loop 1, Loop 3, Loop 2

Subject to prior mutual agreement in writing, the Parties may as the result of cargo availability change this port rotation and/or the number of vessels deployed as they may deem necessary or desirable from time to time. The changes to the port rotation and vessels deployed shall not require an amendment to this Agreement provided that any increase or decrease in the number of vessels deployed will be limited to one vessel.

## 5.2: The Vessels

The Service shall deploy three (3) vessels which will be Combi-Freighter 8000 DWT design or nominal 800 TEU minimum capacity based on 14 metric ton homogenous load per TEU with a service speed of 10 to 12 knots. The Parties may decrease or increase the size of the vessels deployed, but such changes shall not require an amendment to this Agreement.

## 5.3: Provision of Vessels

Initially, CNCO shall provide one (1) vessel and Matson shall provide two (2) vessels. The Parties shall discuss and mutually agree upon the timing, location, and other aspects of phasing-in and phasing-out of the Vessels to be deployed in the Service.

The Parties may also discuss and agree to the conditions upon which a Party may substitute a vessel for a Vessel deployed in the Service, provided that (i) any substitute Vessel shall satisfy the requirements of Article 5.2 hereof, and (ii) the substitute Vessel shall be phased-in at the same position in the cycle as the Vessel it replaces unless otherwise mutually agreed, and (iii) all additional costs including but not limited to transshipment and feeder expenses due to substitution of a Vessel by a Party shall be for the account of the Party substituting the Vessel. The Parties may establish other operational requirements for Vessel substitution as they shall deem appropriate.

The Parties may also consult and agree upon

- a) the number, type, and capacity of vessels to be operated by each of them in the Service,
- b) the allocation of space on vessels deployed in the Service, and
- c) the terms upon which each may charter additional slots to the other on vessels deployed in the Service,

provided that any change in the number of vessels deployed in the Service in excess of the increase or decrease of one vessel contemplated in Article 5.1 may only be accomplished by amendment to this Agreement filed with the U.S. Federal Maritime Commission ("FMC"). The Parties shall notify the FMC of any decrease or increase in the size of the vessels deployed, but such changes shall not require an amendment to this Agreement.

Each Party shall operate its own Vessels deployed in the Service, and shall pay for the fixed and variable costs associated therewith, including, but not limited to, daily running costs, charter hire, bunkers, port charges, dry docking, repairs and insurance.

#### 5.4: Vessel Scheduling and Performance

From time to time the Parties will agree on sailing schedules for the Service based on a pro-forma schedule covering the voyage rotation set out in Article 5.1 hereof. Each Party shall maintain



the sailing schedule and shall use maximum efforts to remedy any failure to comply in accordance with the decisions taken by the Parties. The Parties may, from time to time, consult and mutually agree upon various other aspects of the Service including service frequency, ports (within the Trade) to be served, type and size of vessels to be deployed, the addition or withdrawal of vessels from the Service, and the terms and conditions of any such addition or withdrawal. Parties will from time to time agree on the financial and other implications of any failure to maintain the sailing schedule.

5.5: Space Allocation, Exchange and Chartering

5.5.1: The Parties are authorized to charter, exchange, or otherwise make available to each other space on their respective Vessels deployed in the Service on such terms and conditions as the Parties may agree from time to time.

Unless otherwise agreed by the Parties, space on each of the Vessels deployed in the Service shall be allocated between the Parties in proportion to each Party's total capacity contribution ratio and based on an average weight entitlement of 14.0 metric tons per TEU. All slots will be allocated on a used or not used basis. The Parties may from time to time review the agreed Capacity requirements of the Vessels.

5.5.2: For each voyage leg, Vessel Operator shall provide Container Operator the number of slots equivalent to their basic slot allocation. The basic slot allocation shall be distributed based on each Party's provision within the cycle and shall be pro-rated according to the capacity of the vessel deployed. Each Party shall be entitled to utilize any excess capacity on Vessels it operates in the Service.

5.5.3: In the event that the Container Operator fails to utilize its full basic slot allocation, the Vessel Operator may utilize any unused slots for its own account. If a Party does not intend to use its entire basic slot allocation, it may sell/subcharter slots within its basic slot allocation to any third party VOCC, provided that it has first offered those slots to the other Party at the agreed slot price and provided further that such subcharter shall be without prejudice to the Container

Operator's obligations to the Vessel Operator under this Agreement, and the Container Operator shall be liable to the Vessel Operator for all liabilities and damages that may result from such subcharter.

5.5.4: The Container Operator may request to load Containers in excess of its allocation or sub-allocation subject to the prior approval of, and subsequent coordination with, the Vessel Operator on such terms as the Parties may agree.

5.5.5: A Container Operator may carry break bulk, oversize, non-containerized and/or dangerous cargoes in the Service to the extent that such cargoes can be reasonably and safely transported on the vessels used in the Service but always subject to prior stowage approval by the Vessel Operator which will not unreasonably be withheld. Dangerous goods including, but not limited to goods which are of an inflammable, explosive, poisonous, radioactive, noxious or damaging nature cannot be shipped without the prior agreement of Vessel Operator and Container Operator shall comply with all notice requirements, as well as all applicable governmental and Coast Guard regulations, applicable to the carriage of such cargo.

5.6: Efficient Use of Equipment, Terminals, Stevedores, Ports and Suppliers

The Parties may establish pools of, or otherwise cooperate to interchange, their empty containers, chassis, and/or related equipment to provide for the efficient use of such equipment as between themselves, or with others on such terms as they may agree. The parties may agree on criteria for the selection of terminals to be used in the Service. Nothing herein shall authorize the Parties to jointly operate a marine terminal in the United States nor to jointly negotiate for or jointly procure terminal services at U.S. ports.

5.7: Liability

Prior to the start of the Service, the Parties shall agree on their respective liabilities with

respect to damage to cargo (including general average) and/or equipment, and the procedures to be followed in handling claims for such damage. Each Party shall be responsible for insurance on its vessels. The foregoing terms, conditions, and liabilities may be changed from time to time as the Parties may agree.

5.8: The Parties may discuss and agree on the vessels utilized under this Agreement, including the specifications, qualifications, and capabilities of such vessels, changes in vessels, vessel deployment and operation including, but not limited to, transit times, vessel speed, and changes in vessel speed (such as slow steaming), port rotations, port calls, scheduling, terminals to be used by each Party at various ports, and the factors to be considered in terminal selection, allocations of space and equipment, cost allocations, data collection and distribution, forecasting, recordkeeping, accounting and settlement, stevedoring, terminals and related services, responsibility for loss, damage or injury (including provisions of bills of lading), terms and conditions for force majeure relief, insurance, guarantees, indemnification, compliance with customs, safety, security (including participation in C-TPAT), requisition by flag nations, documentation, and regulatory requirements and other operational and administrative matters. The Parties may enter into further agreements with respect to routine operational and administrative matters to implement the terms of this Agreement. If there is a conflict between such agreements and this Agreement, this Agreement shall prevail.

5.9: Each Party shall operate under its own name, issue its own bills of lading, publish its own tariff, and shall collect its own freights. Each Party shall be responsible for marketing its own interests in the Trade.

5.10: The Parties may discuss and agree on their vessel contributions, including the specifications, qualifications and capabilities of such vessels, changes in vessels, vessel deployment and operation, port calls, scheduling, terminal use, allocations of space and

equipment, cost allocations, data collection and distribution, forecasting, recordkeeping, accounting and settlement, stevedoring, terminal and related services, responsibility for loss, damage or injury (including provisions of bills of lading), terms and conditions for force majeure relief, insurance, guarantees, indemnification, compliance with customs, safety, security, documentation, and regulatory requirements and other operational and administrative matters. Space shall be made available at such slot charter hire and on such other terms as the Parties may agree from time to time. The Parties may make further agreements to implement the terms of this Agreement. If there is a conflict between such agreements and this Agreement, this Agreement shall prevail

#### ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1: This Agreement shall be administered and implemented by meetings, decisions, memoranda, writings and other communications between the Parties.

6.2: The following individuals shall have the authority to file this Agreement with the Federal Maritime Commission as well as the authority to delegate same:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

#### ARTICLE 7: MEMBERSHIP AND RESIGNATION

7.1: New Parties to this Agreement may be added only upon mutual consent. The addition of any new Party to this Agreement shall become effective after an amendment

noticing its admission has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, as amended.

7.2: Any Party may withdraw from this Agreement in accordance with the provisions of Article 9 hereof.

#### ARTICLE 8: VOTING

Except as otherwise provided herein, actions taken pursuant to, or any amendment of, this Agreement shall be by mutual consent of the Parties.

#### ARTICLE 9: DURATION, TERMINATION AND EFFECTIVE DATE OF THE AGREEMENT

##### 9: Duration and Termination

9.1: In regard to the Trade to and from American Samoa, this VSA shall become effective on the Commencement Date which is the date this Agreement becomes effective under the Shipping Act of 1984 as amended or such later date as may be agreed by the Parties in writing.

9.2: This VSA shall be valid for an initial, minimum term of 12 months from the Commencement Date (the "Minimum Term").

9.3: This VSA shall automatically renew for a further period of one year on each anniversary of the Commencement Date (the "Annual Renewal Date") unless either Party shall serve a written notice terminating the VSA at least 90 days prior to the Annual Renewal Date.

9.4: Neither Party may terminate this VSA during the Minimum Term, except as set out in clause 9.6, below.

9.5: After the expiry of the Minimum Term, either Party may terminate the VSA at any time by giving 90 days prior written notice.

9.6: Notwithstanding Clause 9.4, either Party may terminate the VSA immediately under the following circumstances:

- (a) By mutual agreement of the Parties; or
- (b) If the other Party fails punctually, duly and fully to comply with any of its material obligations under the VSA and does not remedy such breach of the obligations within 90 days of receipt of written notice; or
- (c) If the other Party shall become voluntarily or involuntarily dissolved, bankrupt, or insolvent by any cause; or if a petition is filed or an order is made or an effective resolution is passed for the winding up or dissolution of the other Party; or a receiver is appointed for the other Party; or any action or step taken by the other Party shall have an effect similar to any of the foregoing or the requirements thereof in any jurisdiction (except in the case of a solvent merger, amalgamation, or reorganization), or the other Party shall be unable to pay its debts as they fall due.

9.7: In the event of termination of the VSA for any cause, the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued prior to such termination and in relation to the completion of all contracts of carriage outstanding at the date of termination.

ARTICLE 10: ADMINISTRATIVE MATTERS

The Parties are authorized to enter into further agreements with respect to routine operational and administrative matters to the extent necessary or desirable to implement the general provisions contained in this Agreement without amendment to this Agreement. Any amendment to this Agreement shall be filed with the Federal Maritime Commission and shall become effective in accordance with the Shipping Act of 1984, as amended.

ARTICLE 11: APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of England, except that nothing shall relieve the Parties of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

ARTICLE 12: DISCLAIMER OF PARTNERSHIP

This Agreement does not create and shall not be interpreted as creating any partnership, joint venture or agency relationship among or between the Parties, or any joint liability under the law of any jurisdiction.

ARTICLE 13: ARBITRATION

13.1: Any dispute arising out of or in connection with this VSA shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

13.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators, one to be appointed by each Party and the third, subject to the provisions of the LMAA Terms, by the two so appointed.

13.3: A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified in the notice, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the sole arbitrator had been appointed by agreement.

13.4: Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

ARTICLE 14: FORCE MAJEURE



14.1: Force Majeure Event means any circumstance not within a Party's reasonable control including:

- a) Acts of God, flood, drought, earthquake, or other natural disaster;
- b) Epidemic or pandemic;
- c) Terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) Nuclear, chemical or biological contamination;
- e) Any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quarantine, quota or prohibition, or failing to grant a necessary license or consent;
- f) Collapse of buildings, fire, explosion, or accident at any port or terminal; and
- g) Any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party).

14.2: Provided it has complied with Clause 14.3, if a Party (the "Affected Party") is prevented, hindered, or delayed in or from performing any of its obligations under this VSA by a Force Majeure Event, the Affected Party shall not be in breach of this VSA or otherwise liable for any failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.3: The Affected Party shall:

- (a) As soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event, the

date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the VSA; and

- (b) Use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

#### ARTICLE 15: HARDSHIP

In the event that a Party considers that any cause, happening, or event not within its control substantially impairs its ability to enjoy its rights or carry out its obligations hereunder, then at its request, the Parties shall meet with all reasonable dispatch in order to consider such possible adjustment of the terms hereof as may be mutually acceptable.

#### ARTICLE 16: NOTICES

All notices required by this Agreement shall be sent by facsimile or other electronic means, with a confirmation copy sent by registered mail, return receipt requested, addressed as set forth below. All other written communications pertaining to or in connection with this Agreement may be sent by facsimile or other electronic means, addressed as set forth below:

1. The China Navigation Company Pte. Ltd.  
Address: 300 Beach Road. #27-01 The Concourse, 199555 Singapore  
Phone: + 65 6603 9400  
Fax/email [jeremy.sutton@swirecnco.com](mailto:jeremy.sutton@swirecnco.com)
2. Matson South Pacific Limited  
Address: 68 Anzac Avenue, Auckland Central, Auckland, 1010, NZ

Phone: +64 9 3022204 and/or +64 9 917 4514

Fax/email: +64 9 302 0096 / email: GChu@matson.com

Communications by facsimile transmission shall be deemed to have been received if such communications bear the recipient's answerback. Any notice received after closure of business in the country of the Party receiving such notice, shall be deemed received on the next following working day.

ARTICLE 17: NON-ASSIGNMENT OR CHANGE OF COMPANY OWNERSHIP

Neither Party shall assign or transfer this Agreement or all or any part of its rights or obligations hereunder to any person, firm or corporation without the prior written consent of the other Party hereto.

ARTICLE 18: ENFORCEABILITY

If any term, covenant, condition or proviso contained in this Agreement or the application thereto to any person or circumstance shall be held to be invalid, illegal, or unenforceable, the remainder of this Agreement or the application of such term, covenant, condition or proviso to persons or circumstances other than those to which it is invalid, illegal or unenforceable, shall not be affected thereby and each term, covenant, proviso or condition of this Agreement shall be valid and be enforceable to the full extent permitted by law.

ARTICLE 19: AMENDMENT

Except as otherwise expressly provided for elsewhere in this Agreement, this Agreement may not be amended in regard to those provisions relating to United States trade except in writing, duly signed by authorized representatives of the Parties. Any such amendment shall be filed with

the FMC and shall become effective in accordance with the terms of the Shipping Act of 1984, as amended.

ARTICLE 20: COMPLIANCE WITH U.S. LAWS

The Parties shall at all times comply with all applicable laws and regulations of the United States in force during the term of this Agreement. Any consequences resulting from non-compliance by a Party with U.S. laws or regulations shall be borne in full by the non-compliant Party.

ARTICLE 21: COUNTERPARTS

This Agreement may be executed in two or more counterparts. Each such counterpart shall be deemed an original, but all together shall constitute one and the same instrument.

ARTICLE 22: SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

The China Navigation Company Pte. Ltd.

By: \_\_\_\_\_

Name: Jeremy Sutton

Title: GM, Swire Shipping

Date: August 17, 2020

Matson South Pacific Limited

By: \_\_\_\_\_

Name: Vic Angoco

Title: President

Date: August 17, 2020